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Second Session

THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Parque Central, Caracas,
on Friday, 16 August 1974, at 10.50 a.m.

Chairman:

Mr. YANKOV

Bulgaria

Rapporteur:

Mr. HASSAN

Sudan

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PROGRESS REPORTS OF THE CHAIRMEN OF THE INFORMAL MEETINGS ON ITEMS 12 (PRESERVATION OF THE MARINE ENVIRONMENT) AND 13 AND 14 (SCIENTIFIC RESEARCH AND DEVELOPMENT AND TRANSFER OF TECHNOLOGY) (continued)

Mr. VALLARTA (Mexico), speaking as Chairman of the informal meetings on item 12 (Preservation of the marine environment), said that the drafting and negotiating group had considered draft articles concerning the basic obligations on States to preserve the marine environment and reduce marine pollution; the right of States to exploit their own natural resources; particular obligations; the obligation not to transfer pollution from one area to another; global and regional co-operation; technical assistance; and economic factors in respect of land-based sources of marine pollution. The results of the efforts of the drafting and negotiating group would be submitted to the informal meetings on item 12 and subsequently to the Committee for consideration.

Mr. METTERNICH (Federal Republic of Germany), speaking as Chairman of the informal meetings on items 13 and 14 (Scientific research and Development and transfer of technology), said that efforts were being made to arrive at specific alternative texts concerning general conditions for the conduct of marine scientific research. The informal consultation and negotiating group had prepared a complete table on that subject. The informal meetings had considered consent, participation and obligation of coastal States and international and regional co-operation for marine scientific research, including exchange and publication of scientific data and international ocean space institutions. Discussions concerning general conditions for the conduct of marine scientific research had been postponed to the next meeting. It had also been agreed that matters relating to the status of scientific equipment in the marine environment and responsibility and liability should be considered at a later stage in the context of the Convention as a whole. Informal proposals on those matters had been submitted. As Chairman of the informal meetings, he had been requested to prepare a text concerning the matter of consent, participation and obligations of coastal States, as only a few proposals had been submitted to the Sea-Bed Committee on that subject. That text would be considered at the next informal meeting of the Committee.

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PRESERVATION OF THE MARINE ENVIRONMENT (continued)

Mr. LIVI (Italy) said that his Government, greatly concerned over the marine environment, particularly of the Mediterranean Sea, had approved the provisions of principle 25 of the Declaration of the United Nations Conference on the Human Environment concerning the role of international organizations in the preservation of the environment. Recalling the statements made by the Executive Director of the United Nations Environment Programme and the Observer for UNEP, he wished to comment briefly on the matter of co-operation among States and international bodies. Firstly, he agreed that States that had accepted the conventions on ocean dumping and pollution from ships should accelerate the national procedures required to bring those conventions into effect and should oblige ships flying their flags to respect their international obligations. In that connexion, he drew attention to the fact that his Government had now acceded to the 1973 Convention for the Prevention of Pollution from Ships. His delegation also believed that States should co-operate in providing technical assistance to developing countries to enable them to participate in marine scientific research and to take measures to protect the marine environment, and he could therefore accept the provisions of article 17 (a) the Kenyan draft articles in document A/CONF.62/C.3/L.2.

Secondly, he supported the concept that the United Nations Environment Programme should act as international co-ordinator of environmental activities within and outside the United Nations system, and not as a supranational regulatory agency seeking to enforce policies, rules and regulations or to take over the sectoral responsibilities of different international organizations. It should accordingly co-ordinate activities under the Environment Co-ordination Board established pursuant to General Assembly resolution 2997 (XXVII). Thirdly, since he felt that the preservation of the marine environment on the one hand and the protection of the living resources of the sea on the other should be dealt with separately by different organizations, the United Nations Environment Programme and other competent international organizations should co-operate closely in order to avoid duplication of effort, UNEP providing the over-all framework for co-ordinating, reviewing and guiding the activities of States and international organizations that might affect the quality of the marine

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environment. His delegation would therefore prefer to retain, with some small amendments, the text submitted to the Sea-Bed Committee by Kenya in article XVII of document A/AC.138/SC.III/L.41 rather than article 14 of Kenya's proposal in document A/CONF.62/C.3/L.2. As far as specific responsibilities were concerned, the Governing Council of UNEP, of which Italy was a member, had recently instructed UNEP to assist States in establishing, at regional and local levels, standards, rules and regulations for the prevention of marine pollution from land-based sources; the future Convention should also recognize UNEP as the appropriate forum for such an effort.

Fourthly, further consideration should be given to articles 12-16 of the Kenyan proposal in document A/CONF.62/C.3/L.2.

The United Nations had taken decisions of historic importance in 1972 in establishing institutional machinery for environmental activities, and due consideration must be given to UNEP in all international conventions concerning the preservation of the environment. Those considerations should be borne in mind in drafting the relevant articles of the Convention being prepared by the Conference.

Mr. BARRA (Chile) said that he wished to inform the Committee of the running aground of the oil tanker METULA in the Straits of Magellan off the extreme southern coast of his country. The accident, which had occurred on 9 August had resulted in the rupture of two of the ship's storage tanks, which in turn had produced an oil spill along a front of about 25 miles. There were legitimate fears that the ship might split apart and thereby endanger safety of navigation, the well-being of the inhabitants of the coast, and the life of local marine species.

Immediately following the accident, his Government had taken the necessary emergency measures and had informed the Inter-Governmental Maritime Consultative Organization of its occurrence, requesting the assistance of experts in the field of marine accidents and pollution from that organization, as well as from FAO. He thanked the Governments of Canada and the United States for their offers of experts and technical assistance.

His country had also been obliged to prohibit temporarily passage through the Straits of tankers which had a capacity of more than 80,000 deadweight tons and whose draught was greater than 50 feet. That measure was merely temporary, however, and was not intended to circumvent in any way existing international treaties or to restrict

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freedom of navigation. Rather it was intended to safeguard navigation, since tankers of such dimensions were far more vulnerable than other vessels to the hazards of the climatic conditions which often prevailed in the area.

Steps had to be taken to prevent such accidents, and when they occurred international machinery was needed to deal with their serious consequences. It was especially necessary to devise formulas for international co-operation in cases where such accidents caused damage to developing countries like his own which did not possess the same technological means as the industrialized countries to deal with them.

His delegation believed that jurists, scientists and the maritime industries could join forces to strengthen international co-operation and put a halt to the pollution of the seas and the destruction of their marine resources. Given the increased risks of pollution from oil spills from tankers, it was reasonable to expect the giant oil companies to finance regional stations under the supervision of IMCO whose purpose would be to reduce the risk that such spills might catch fire and to combat their contaminating effects on the marine environment. The Third United Nations Conference on the Law of the Sea was the appropriate forum for making an appeal to that effect. His country's purpose in bringing the METULA incident to the attention of the Committee was not to place blame on any State or company, but rather to suggest a possible method of dealing with such accidents in the future.

The CHAIRMAN commended the suggestions made by the representative of Chile to the attention of the Committee. He said that accidents such as the one involving the METULA served to increase awareness of the magnitude of the problem and to emphasize the urgent need for States to ratify the existing IMCO conventions, such as the 1969 International Convention on Civil Liability for Oil Pollution Damage, the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and the 1973 International Convention for the Prevention of Pollution from Ships. He hoped that the METULA incident would spur the Committee to draft effective rules aimed at preventing such accidents and alleviating their effects when they occurred.

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Mr. RITHABENI (Netherlands) made a statement on the ship "Metula", a crude oil carrier flying the Netherlands flag and owned by the Curacao Shipping Company, which had gone aground 60 nautical miles inside the Magellan Strait, spilling 6,000 tons of crude oil. His delegation fully shared the concern of the representative of Chile regarding the accident and its possible consequences.

A team of salvage experts was on the site and representatives of Shell were discussing with Chilean authorities the details of the clean-up operation.

The competent Netherlands authorities would of course institute the usual full scale investigation of the circumstances and cause of the accident.

Mr. ZEGERS (Chile) thanked the Chairman and the representative of the Netherlands for their sympathetic remarks and said that he agreed with the Chairman on the need to encourage international co-operation in the realm of prevention of and compensation for oil pollution casualties. One form such co-operation could take was the ratification of relevant IMCO Conventions.

There was in addition a need for international machinery to come to the assistance of States, particularly developing States, which suffered damage from such accidents. Regional stations financed by the oil companies and supervised by IMCO such as he had described in his earlier statement would be helpful in that regard, and his delegation was studying the possibility of preparing a working paper on that subject.

Mr. MENSAB (Inter-Governmental Maritime Consultative Organization) said that IMCO had been kept duly informed with regard to the accident involving the tanker Metula. The Secretary-General of IMCO had been in touch with the Chilean Ambassador in London and had informed him that IMCO was ready and willing to provide experts to his Government. Furthermore, IMCO had been acting as an intermediary between Chile and other Governments which might be able to provide assistance.

He endorsed the remarks made by the Chairman on the need for States to adhere to the relevant IMCO Conventions, and hoped that reinforced treaty articles would be included in the new Convention on the law of the sea making effective provision for situations of the kind the Committee was considering.

He drew the attention of the Committee to the 1971 IMCO Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage which

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had been intended to supplement the 1969 International Convention on Civil Liability for Oil Pollution Damage. When the fund came into force, it would be able to provide compensation to the extent of \$US 30 million, and in some cases up to \$US 60 million. But compensation was not the only concern of the 1971 Convention. The Director of the Fund would be empowered to provide credit facilities to States to enable them to deal with such oil pollution casualties. Thus that Convention offered the possibility of international machinery, such as the representative of Chile had recommended, which would enable States, especially developing States, to deal with the problem of oil pollution casualties. The Convention required the ratification of eight States to enter into force, and although there had been only one ratification so far, a large number of States were actively considering the possibility of ratification. IMCO expected that the Convention would enter into force some time in 1975.

Mr. SCHRAM (Iceland) said that although there still existed a fairly wide divergence of opinion among delegations on the constituent elements of a comprehensive convention on the marine environment, a compromise text must remain the ultimate aim of the Committee.

The majority of the participants in the Conference seemed to favour the zonal approach to the prevention of marine pollution. However, an equitable balance had to be struck between the competences of the coastal State and the flag State for that purpose within the 200-mile economic zone. The coastal State should be granted full jurisdictional rights to establish rules and regulations for the preservation of the marine environment on the condition that they were based on international standards and regulations. Thus the new régime of coastal State jurisdiction with regard to pollution control would not, as a number of delegations feared, adversely affect the freedom of international navigation.

In accordance with the principle of sovereign rights of the coastal State in the zone, it should enjoy the right to enforce pollution regulations there, just as it had the right to implement its economic jurisdiction in the area. Various proposals had been made concerning the enforcement jurisdiction of the flag State. The practice of international fisheries commissions however provided a valuable example of the workings of the coastal State's right to inspect and arrest foreign vessels where circumstances

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warranted. Of course, the coastal State should at all times exercise such rights without interfering unduly with other legitimate uses of the sea.

There would not be enough time at the current session of the Conference to examine in detail the important question of liability and damages, although hopefully a consensus could be reached on the acceptance of the principle of the liability of States for damage attributable to them caused in or to areas under the jurisdiction of other States and also of the principle responsibility of States to ensure that activities carried out under their jurisdiction or control did not cause damage to the environment of other States. In that connexion, the area beyond national jurisdiction posed a special problem. The international rules applicable there would have to be enforced by an international authority such as UNEP and liability for damage to that area had to be borne by the responsible States.

Sir Roger JACKLING (United Kingdom) expressed his regrets in connexion with the Metula accident and trusted that it would be possible to limit the damage to the marine environment to a minimum. The accident underlined the need for contingency planning and technical assistance. He noted with satisfaction that the informal working group had agreed on measures in that respect.

The prevention and control of marine pollution had been the subject of a great deal of effort in recent years, and he was pleased to inform the Committee that as a result of recent legislation, his Government was now in a position to ratify the 1969 Convention for Liability for Oil Pollution, the 1971 Convention on the International Fund, the 1971 amendments to the 1954 Oil Pollution Convention and the 1972 London Convention on the Prevention of Pollution from Ships. The United Kingdom Government was already imposing higher standards on its ships than those provided for in the 1969 amendments to the Oil Pollution Convention, although those amendments were not enforced internationally and their implementation imposed a competitive penalty on British ships. It was also a party to the Oslo Convention and together with a group of other European countries had recently signed a convention which should bring land-based sources of pollution in the North Sea and North-East Atlantic under control.

It was the view of his delegation that the function of the present Conference was to provide an efficient and effective framework into which those conventions and

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(Sir Roger Jackling, United Kingdom)

others could be incorporated while maintaining a sensible balance with other objectives. A scientific assessment of pollution must be made and on that basis, the costs of preventing pollution must be related to the benefits derived from doing so.

While the cost factor would inevitably affect the speed with which pollution could be eliminated from the marine environment, his delegation deplored attempts to introduce double standards whereby a State might impose on foreign ships entering its waters standards more stringent than those internationally agreed on, whilst at the same time insisting that its own ships visiting other States' waters should be allowed not to comply with even the minimum international standards.

Pollution was a world problem and his delegation viewed with much concern proposals which, in effect, would create second class systems and which were unlikely to establish generally acceptable provisions.

Any régime that emerged from the present Conference must give considerable responsibility to coastal States in relation to control of pollution in the waters immediately bordering their territory. As a coastal State which had experienced major pollution incidents, the United Kingdom supported coastal State rights and obligations to control land-based and sea-bed sources of marine pollution and dumping provided that the proposed régime contained suitable safeguards.

Vessel-source pollution, though in toto probably less damaging than land-based, raised more difficult problems of control. At the present time, responsibility in that field lay almost entirely with the flag States. That system had been criticized, and it was true that some flag States were more punctilious than others in the exercise of their responsibilities, but its achievements should not be forgotten. There was a justifiable sense of urgency with regard to pollution prevention and some impatience with the established process of international negotiations. Efforts had been made by IMCO and maritime and coastal States to speed up that process. Much had been agreed on and implemented through the adoption of resolutions recommending codes of practice, standard practices and guidelines which, together with the studies carried out by IMCO and distributed to member Governments, were frequently acted upon by flag States without any formal obligation to do so. Formal conventions took longer, but even there the

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record was good. Furthermore, proposals were under consideration which would enable technical amendments to conventions to be adopted by a "passive acceptance" procedure which would enable the machinery of international agreement to keep up with the rapidly changing technologies of the modern world.

It was against that background that the case that had been put forward for greater coastal States involvement in the control of vessel-source pollution should be examined. His delegation considered that any régime which allowed ships' discharge and construction regulations to be made in any way other than by international agreement would give rise to serious practical problems. It had expressed its views in that respect in the Second Committee. Some delegations had emphasized the need to confirm the right of States to protect their economic resources from pollution. While accepting that principle where it was efficient and effective, his delegation considered that the protection of economic resources from vessel-source pollution could most effectively be done through international agreements drawn up at the present Conference.

Referring to the question of enforcement, he said that his Government took its responsibilities in that field very seriously. It inspected ships in port, acted on information from abroad and dealt with all cases reported to it either by administrative action or through prosecution. One of the main problems in that respect was obtaining adequate evidence to satisfy courts of law and obtain conviction. Coastal State enforcement powers would not change that problem. The 1973 Convention which used the system of port States inspection to provide evidence which the flag State needed went a long way to removing impediments to prosecution. Referring to the views expressed by the representative of Iceland concerning the relevance of fisheries commissions' practices in that respect, he considered that as the collection of evidence was easier in the case of fisheries, such practices were not necessarily applicable in the case of marine pollution control. However, a more rigorous definition of the responsibilities of a flag State was necessary and his delegation had recently submitted proposals to the Second Committee to that end.

His Government appreciated the concern of many States that regulations should be effectively enforced. It considered that means could be found to meet that concern while

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at the same time recognizing the important part that the flag States must continue to play in the prevention of marine pollution and the need to ensure that world trade was not unnecessarily impeded.

Ratification and implementation of existing international conventions in the field of marine pollution control was the best means of improving the marine environment and he strongly endorsed the appeal by the Chairman to members of the Committee to make recommendations to their Governments to ratify those conventions as soon as possible, as most maritime countries had already done.

Mr. METTERNICH (Federal Republic of Germany) expressed his regrets concerning the Metula incident and trusted that the consequences would not be too disastrous. He informed the Committee that the conventions relating to intervention on the high seas in cases of oil pollution casualties, civil liability for oil pollution damage and the establishment of an international fund for compensation for oil pollution damage were now being considered by the Parliament of the Federal Republic of Germany. It was hoped that the parliamentary process would soon be completed and that his country would be in a position to ratify those conventions before the end of the year. Together with the Netherlands, Belgium, the United Kingdom, Norway, Sweden and Denmark, his country was a party to the 1969 regional agreement on co-operation in dealing with oil pollution in the North Sea. Such arrangements were useful but it was important to establish world-wide regulations.

Mr. JAIN (India) expressed his sympathy to the people of Chile with regard to the Metula incident and commended the efforts being made by developed countries and the international organizations to limit damage to the marine environment.

He inquired whether in the case of pollution damage to fisheries coastal State jurisdiction was enforceable in the port State only and not in the place where the damage had been caused.

The CHAIRMAN replied that the question of coastal State jurisdiction had already been considered in the Committee. He took it that the representative of India was emphasizing the importance of protection from pollution. That aspect could be the subject of further deliberations.

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Mr. KOVALEV (Union of Soviet Socialist Republics), recalling the serious incident reported by the representative of Chile, stressed once again his delegation's sincere concern that the most effective measures possible should be adopted to prevent marine pollution. In March 1974 his Government had signed the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area; in July 1974 it had signed the 1973 Convention for the Prevention of Pollution from Ships, and it was now giving serious consideration to acceding to the 1971 Convention on the establishment of an international fund for compensation for oil pollution damage, to which the representative of IMCO had referred.

The future convention should include strong provisions guaranteeing the right of coastal States to take measures in their territorial waters in the case of incidents at sea which were a serious threat to their interests; those provisions would apply not only to incidents involving ships but also to incidents connected with the exploitation of the sea-bed. His delegation supported the proposal for increased responsibility of flag States for any damage caused to other States through marine pollution from ships sailing under their flag. He could not, however, agree to the proposal that States should have full legal jurisdiction over the 200-mile zone off their coast, since that would result in undue interference with fishing and international navigation and would give the coastal State the right to stop foreign ships for inspection, bring them to port and even imprison the captain and crew. Such a provision, moreover, would raise freight costs and have adverse effects on the economy of developing countries. Accordingly, while he supported the application of stringent measures to prevent marine pollution, he could not agree that a coastal State had full legal responsibility for preventing pollution in the 200-mile zone off its coast.

Mr. LOPEZ REYNA (Colombia), speaking on behalf of the Group of 77, conveyed the sympathy of the Group to the people of Chile with regard to the Metula incident and expressed its strong support for the Chairman's appeal for co-operation from international organizations and the adoption of measures to help prevent such incidents.

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Mr. YTURRIAGA BARBERAN (Spain) joined other delegations in expressing his sympathy to the people of Chile with regard to the Metula incident and trusted that it would be possible to limit damage to a minimum. His country understood the effects of such incidents as it had suffered similar damage as a result of oil and chemical pollution. Those incidents demonstrated the need to recognize the rights of coastal States with regard to pollution control in seas adjacent to their coasts. For that reason his delegation was one of the sponsors of document A/CONF.62/C.3/L.6 which contained provisions for a zonal approach to the problem of marine pollution. Exclusive flag State competence was insufficient and no longer acceptable. It was necessary to guarantee reasonable coastal State competence and to adopt measures for the prevention of marine pollution, together with provisions for the enforcement of sanctions against those responsible for damage. His country had ratified most international agreements for the protection of the marine environment against vessel-source pollution and he supported the Chairman's appeal to members of the Committee to make recommendations to their Governments to adhere to the relevant IMCO conventions.

Mr. MITSCHKA (German Democratic Republic) said that his country was a party to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea area and hoped to ratify in the near future the 1969 IMCO conventions relating to oil pollution damage and the 1973 Convention for the Prevention of Pollution from Ships.

ORGANIZATION OF WORK

The CHAIRMAN suggested that the Committee should devote two and a half days the following week to consideration of items 13 and 14 in informal meetings and two and a half days to consideration of item 12 also in informal meetings. The Committee could then meet formally on Monday, 26 August, to adopt its report.

He also suggested that, as had been recommended by the bureau of the Committee, the report should be a short, concise, factual report, with annexes containing the consolidated and agreed draft articles which had been considered in informal meetings and transmitted to the Committee in the form of letters from the chairmen of the informal meetings to the Chairman of the Committee. The annexes would enable future sessions of the Conference to make full use of the results of the current Conference.

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(The Chairman)

There was also a suggestion that he, as Chairman, should make a final statement, summing up the work of the Committee; it would not, however, commit the Committee. He intended to raise matters, in his statement, that would be relevant to the future work of the Committee rather than describe its past work.

Mr. HASSAN (Sudan), Rapporteur, said that the General Committee still had to take a decision concerning reports. He had, however, already consulted with members of the Committee on the possible format of the Committee's report. Two prevailing trends had emerged, the first being that the main objective of the report was to ensure that the progress made at the current session of the Conference would be continued at future sessions; it had been felt that the best way to attain that objective would be to have a factual report describing the work of the Committee, rather than one dealing with matters of substance. The second point was that most delegations felt that the trends in the Committee on different questions should not be reflected in the report as they would have to be extracted from the general debate held at the beginning of the session.

He therefore suggested that the report should be a concise, factual report describing the establishment of the Committee, the composition of the bureau, the organization of work, stating the number of meetings and listing the documents submitted. Annexes would be attached to the report, containing the communications from the chairmen of the informal meetings on item 12 and items 13 and 14; those communications would report the progress achieved in the informal meetings in the form of consolidated or agreed draft texts and whatever the chairmen felt would be relevant to the work of the Committee at the next session of the Conference.

Mr. LOPEZ REYNA (Colombia), speaking on behalf of the Group of 77, requested the Chairman to cancel the next afternoon and evening meetings and also two meetings the following week to enable the Group of 77 to meet and adopt draft articles on the questions of pollution, scientific research and the transfer of technology. The Group of 77 felt it could make a valuable contribution to the work of the Committee by submitting consolidated draft articles.

Mr. VALLARTA (Mexico) said that, in his capacity as representative of Mexico, he supported the request made by the representative of Colombia. However, in his capacity as chairman of the informal meetings, he would have to request additional

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(Mr. Vallarta, Mexico)

time for informal meetings, so that the drafts prepared by the small informal negotiating group could be submitted for approval to the informal meetings in which all members of the Committee were represented. He recalled that, in the past, documents submitted to the Sea-Bed Committee had been submitted by small groups and not approved by the majority of representatives, which had weakened them considerably. He therefore requested that two or three meetings should be reserved for informal meetings.

Mr. JAIN (India), Mr. BOHTE (Yugoslavia), Mr. LIU (China) and Mr. RODRIGUEZ (Venezuela) supported the proposal made by the representative of Colombia.

The CHAIRMAN suggested that, as a compromise, the Group of 77 should be invited to hold meetings that afternoon and evening, on Monday evening and on Tuesday morning or afternoon. If he heard no objection, he would take it that the Committee agreed to that suggestion.

It was so decided.

Mr. YTURRIAGA BARBERAN (Spain) observed that adequate time should be allowed towards the end of the session for translation of documents and of the report of the Committee.

Commenting on the format of the report, he agreed that the report should be a factual one, but suggested that, in addition to annexes containing the three consolidated texts, the amendments and alternatives contained in Conference Room Papers to articles on which agreement had not been reached should also be included in the report.

Mr. VALLARTA (Mexico) said that the Conference Room Papers on marine pollution and the comparative tables had been issued as informal documents, at the request of many delegations. The approval of the Committee would be needed before they could be issued as formal documents.

Mr. HASSAN (Sudan), Rapporteur, said that the Conference Room Papers were highly informal documents. They would be considered further at informal meetings which could decide whether they should be included in the report.

The CHAIRMAN said that, if he heard no objection, he would take it that the Committee accepted the format of the report as suggested by the Rapporteur, subject to the instructions, if any, of the General Committee.

The meeting rose at 1.20 p.m.